

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Big Lots Stores, Inc.,
Plaintiff(s)

vs.

Zurich American Insurance Co., et al.
Defendant(s)

:
: Case No. 2:14-cv-02635
: District Judge: Marbley
: Magistrate Judge: Deavers
:
: RULE 26(f) REPORT OF PARTIES
: (to be filed no fewer than seven (7)
: days prior to the Rule 16 Conference)
:

1. Pursuant to F.R. Civ.P. 26(f), a meeting was held on June 8, 2015 and was attended by:

Mary F. Geswein, counsel for plaintiff(s) Big Lots Stores, Inc.
_____, counsel for plaintiff(s) _____

Crystal Maluchnik, counsel for defendant(s) Zurich American Insurance Company and AGLIC
_____, counsel for defendant(s) _____

2. **Consent to Magistrate Judge.** The parties:

___ unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. 636 (c).
X do not unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. 636 (c).

3. **Initial Disclosures.** The parties:

___ have exchanged the initial disclosures required by Rule 26(a)(1);
X will exchange such disclosures by September 11, 2015
___ are exempt from such disclosures under Rule 26(a)(1)(E).
___ have agreed not to make initial disclosures.

4. **Jurisdiction and Venue**

a. Describe any contested issues relating to: (1) subject matter jurisdiction, (2) personal jurisdiction and/or (3) venue:

None.

b. Describe the discovery, if any, that will be necessary to the resolution of issues relating to jurisdiction and venue:

None.

c. Recommended date for filing motions addressing jurisdiction and/or venue:

N/A

5. Amendments to Pleading and/or Joinder of Parties

a. Recommended date for filing motion/stipulation to amend the pleadings or to add additional parties: August 10, 2015

b. If class action, recommended date for filing motion to certify the class: _____

6. Recommended Discovery Plan

a. Describe the **subjects** on which discovery is to be sought and the nature and extent of discovery that each party will need:
Plaintiffs intend to take discovery on all issues related to Defendants' coverage decision to treat underlying injuries as multiple occurrences.

Defendants: Discovery will be sought as to coverage for all claims at issue, and may include subjects such as the insurance policies providing coverage to Big Lots, the underwriting of such policies, the underlying contracts, the underlying facts, and the underlying litigation. Discovery may include interrogatories, requests for admission, requests for production, third-party subpoenas, and depositions.

b. What **changes** should be made, if any, in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the local rules of this Court?

None.

c. The case presents the following issues relating to disclosure or discovery of **electronically stored information**, including the form or forms in which it should be produced:

The parties are working on a mutually agreeable ESI plan.

d. The case presents the following issues relating to claims of **privilege or of protection as trial preparation materials**:

The parties will execute a mutually agreeable Protective Order.

i. Have the parties agreed on a procedure to assert such claims **AFTER** production?

___ No

___ Yes

☒ Yes, and the parties ask that the Court include their agreement in an Order.

e. Identify the discovery, if any, that can be **deferred** pending settlement discussion and/or resolution of potentially dispositive motions:

N/A

f. The parties recommend that discovery should proceed in **phases**, as follows:

N/A

g. Describe the areas in which **expert testimony** is expected and indicate whether each expert will be specially retained within the meaning of F.R.Civ.P.26(a)(2):

Plaintiff: Expert testimony is expected on the subject of whether the underlying injuries constitute a single occurrence; Zurich's policy language; Zurich's claims handling.

Defendant: Expert testimony may be provided as to the issues involving product liability, the underlying litigation, the number of occurrences under the American Guarantee & Liability Insurance Company policies, and whether Zurich American Insurance Company was involved in processing, managing, and/or evaluating the claims submitted by Big Lots under the policies as alleged in ¶ 1 of the Amended Complaint.

i. Recommended date for making **primary expert designations**:

April 30, 2016

ii. Recommended date for making **rebuttal expert designations**:

May 30, 2016

h. Recommended discovery **completion date**: July 15, 2016

7. Dispositive Motion(s)

a. Recommended date for filing dispositive motions: August 15, 2016

8. Settlement Discussions

a. Has a settlement demand been made? Yes A response? No

b. Date by which a settlement demand can be made: July 31, 2015

c. Date by which a response can be made: August 15, 2015

9. Settlement Week Referral

The earliest Settlement Week referral reasonably likely to be productive is the

March 20 Settlement Week

June 20 Settlement Week

X September 20 15 Settlement Week

December 20 Settlement Week

10. Other matters for the attention of the Court:

Signatures:

Attorney(s) for Plaintiff(s):

John P. Gilligan
Ohio Bar# 0024542
Trial Attorney for Plaintiff

James E. Davidson
Ohio Bar# 0024534
Trial Attorney for Plaintiff

Mary F. Geswein
Ohio Bar# 0063361
Trial Attorney for Plaintiff

Nicole R. Woods
Ohio Bar# 0084865
Trial Attorney for Plaintiff

Attorney(s) for Defendant(s):

Steven G. Janik
Ohio Bar# 0021934
Trial Attorney for Defendants

Crystal L. Maluchnik
Ohio Bar# 0077875
Trial Attorney for Defendants

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Trial Attorney for

Ohio Bar#
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